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A NOD TO CONSENT : IN STEP WITH THE UCPR

UCPR – request for entry of judgment by consent – no step for more than 2 years – whether r 389 requires leave of the court – application of philosophy expressed in r 5

The observations of Robin DCJ in his judgment in *CTP Manager Limited v Ascent Pty Ltd* [2011] QDC 74 are likely to influence the practice in the court registries in similar circumstances.

Facts

The proceeding in this matter had begun in 2004. A request for consent order/judgment putting an end to third party proceedings had been signed by the solicitors for the relevant parties. The registrar had declined to enter judgment on the basis there had been no step taken in the proceeding for longer than 2 years, so that the leave of the court was required under 389 of the *Uniform Civil Procedure Rules 1999* (Qld) (UCPR).

Under Rule 389(2) of the UCPR: “If no step has been taken in a proceeding for 2 years from the time the last step was taken, a new step may not be taken without the order of the court, which may be made with or without notice”

The matter was referred to the court.

Analysis

Robin DCJ made the order sought, dismissing the third party claim and entering judgment for the third party, with the parties in the third party proceedings to bear their own costs.

In making this order Robin QC DCJ expressed his view that the caution exhibited in the registry was not necessary in circumstances where all relevant parties have consented to an order which would put an end to the third party proceedings. His honour said (at 2):

There seems little rational justification for rule 389 being given what appears to be its effect in the present context, particularly in an era when the court is doing all it can by practice directions and even changes to the rules to facilitate resolution of matters by consent orders.

His Honour regarded the taking a step in a proceeding which, on the basis of relevant parties’ consent, brings a proceeding to an end, as of a different character from steps which appeared to be in contemplation under r 389, which would tend to jeopardise the position of the party not taking the step. In that context his Honour said r 389 “can be approached with a certain amount of robustness and flexibility”.

Comment

The purpose of the UCPR, as expressed in rule 5, is to “facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense.” The rules are to be applied by the courts with the objective of avoiding undue delay, expense and technicality and facilitating the purpose of the rules: UCPR r 5(2).

The judgment in this case is a common sense application of rule 5, and demonstrates that there is scope for registry officers to play their part in making the philosophy a reality. It is anticipated that the clear tenor of the judgment in this case will influence registry practice for the better in circumstances such as this.